90-920

Supreme Court, U.S.
FILED
OCT 17 1990
JOSEPH F. SPANIOL, JR.
CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1990

HENRY ANDERSON,

Petitioner,

vs.

STATE BAR OF CALIFORNIA, JEROME M. VARANINI, SUZANNE M. TRIMBLE, P.C. MEMERING, VARANINI, HURST, CROWLE & TRIMBLE, JOHN L. SULLIVAN, PAMELA E. COGAN, DENISE J. FISCHER, P.C. WEINTRAUB, GENSHLEA, HARDY, ERICH & BROWN and GENERAL MOTORS CORPORATION,

Respondents.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Henry Anderson
676 Covey Road
Valley Springs
Ca. 95252

QUESTIONS PRESENTED FOR REVIEW

A. Have People of the United States including petitioner, ever surrendered their rights of estoppel to the U.S. Government?

B. Have the People of California surrendered their rights of estoppel to the California State Government?

C. Whether 28 USC Section 1827 is unconstitutional in that the statute does not comply with standards established by this Supreme Court for use in valid laws?

D. Whether the State of California can impair the obligations of contracts thru passage of discovery rules?

E. What privilege do the U.S. District Courts have to make local court rules that are inconsistent with the Federal Rules of Civil Procedure?

F. Whether Federal courts have privilege to make local court rules that are inconsistent with Supreme Court decisions?

G. What privilege do defendants have to

violate their promissory oaths & use state procedures to impair their obligations of contracts?

H. When & where has petitioner surrendered his rights of Trial by Jury?

I. What academic or professional or technical or practical qualifications do the U. S. courts possess that enable the courts to make intelligent decisions regarding petitioner's impaired hearing handicap?

J. What authority does the court of appeals have to modify, emasculate and misrepresent 28 USC 372(c) ?

K. What privilege does the court of appeals have, that allows the court to fabricate local rule 21, which is inconsistent with the United States Constitution & decisions of this Supreme Court?

L. What privilege does the court of appeals have to usurp the legislative powers of Congress?

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No. _____

IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA

October Term, 1990

HENRY ANDERSON,

PETITIONER,

vs

STATE BAR OF CALIFORNIA, JEROME M. VARANINI, SUZANNE M. TRIMBLE, P.C. MEMERING, VARANINI, HURST, CROWLE & TRIMBLE, JOHN L. SULLIVAN, PAMELA E. COGAN, DENISE J. FISCHER, P.C. WEINTRAUB, GENSHLEA, HARDY, ERICH & BROWN and GENERAL MOTORS CORPORATION,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner HENRY ANDERSON, respectfully prays that a writ of certiorari issue to review the judgment & Opinion of the United States Court of Appeals for the 9th Circuit entered in this case 7-23-1990.

The Court of Appeals has also ignored enactments by the United States Congress & failed to provide petitioner the benefits and protection of those enactments. The Appellate Court has also rendered a decision in conflict with a decision of another Appellate Court on the same matter.

OPINIONS BELOW

The Opinion of the Court of Appeals is an unpublished written Opinion of the 9th Circuit & appears in Appendix A, page A-1. The unpublished written Opinion of the District Court for the Northern District of California appears in Appendix B to this Petition. The unpublished written Opinion of the District Court for the Eastern District of California Appears in Appendix C.

JURISDICTION

The Court of Appeals Opinion was filed on July 23, 1990. The Court of Appeals denied a Petition for rehearing in their Opinion. A timely Notice of Appeal was received by the court clerk on 8/6/1990.

CONSTITUTION AND STATUTORY PROVISIONS

United States Constitution, Article I, Section 10, is set forth in Appendix E.

United States Constitution, Article III, Section 1, is set forth in Appendix E.

United States Constitution, Article VI, Clause 2, is set forth in Appendix E.

United States Constitution Amendments One, Five, Seven, Nine, Ten and Fourteen are set out in Appendix E.

Federal Statutes.

28 USC Sec, 1654. Appearance personally or by counsel.

In all courts of the United States the parties may plead & conduct their own cases personally or by counsel.

Federal Rules of Evidence, Rule 801.26

A judicial admission is binding upon the party making it; it may not be controverted at trial or on appeal.

STATEMENT OF THE CASE

This controversy is an action upon a contract. The sum in controversy is more than $10,000.00. The sum of $10,000.00 is not a frivolous amount of money and it is capable of being tried in federal court.

The contract involved the purchase of a new Chevrolet pickup truck from defendants General Motors Corporation & its retail selling agent, Caddel Chevrolet Corp. dba John L. Sullivan aka John L. Sullivan Chevrolet.

At all times prior to and during contract negotiations between seller General Motors Corp., Caddel Chevrolet Corp. and buyer-petitioner Anderson, defendants did not ask any questions about Andersons personal history. The only question the sellers asked, was, did the buyer have money to purchase the product from the sellers? That money was the heart of the contract.

The buyer Anderson asked the sellers

if the product was new and of merchantable quality & covered by warranties and if the product was dependable and safe to drive.

The sellers answered yes to the buyers questions about warranties & other matters.

Unfortunately the new pickup was defective & has repeatedly failed to perform as represented by the defendants, that defective product has continually malfunctioned and has had to be towed to the nearest garage for emergency repairs, to make the defective product operate.

For instance, the windshield developed a couple of cracks, a short time later the windshield had so many cracks in it which obscured vision & made the pickup a hazard to drive, the windshield then disintegrat- and fell out.

Petitioner Anderson wrote to GMC about the defective product & GMC sent the usual soft soap letter to Anderson in reply.

Anderson also wrote to Caddel Chevro-

let about the defective product.

Caddel never made any answer to Andersons complaints.

Not getting any response from the sellers, buyer Anderson filed a civil action in state court seeking adjudication of his civil rights. The state court had no idea of property rights being civil rights. The state judge kept stalling the matter.

Anderson then filed his civil case in the U.S. District Court for the Eastern District of California. The judge didnot hold any full hearings allowing confrontation between the parties; the buyer and the sellers, of the defective product.

The court didnot recognize the fact the procedures the defendants were using were impairments of obligations of contracts & made under authority of state law & those impairments deprived buyer of his constitutional rights to due process of law and equal protection of the laws.

The judge didnot hold any full hearings

on the controversy & there is no record of any such hearings & the brief court minutes do not state correctly the events and omissions taking place in the courtroom.

Meanwhile defendant Suzanne M. Trimble and John L. Sullivan conspired to and did fabricate & serve 85 false interrogatories on buyer, Anderson, under color of state laws, CCP sections 2030 and 2016.

Anderson filed a 3 page notice of CLAIM OF UNCONSTITUTIONALITY, CR4, 4/2/87 regard-those CCP Sections 2030 & 2016 which is set forth in appendix F.

The district court breached its duties under 28 USC 2403 and failed to certify that fact of the NOTICE to the State attorney general.

Anderson asked the court clerk what had been done to certify my claim of unconstitutionality as required by the laws & he said nothing had been done. It appeared to Anderson that the court would make no attempt to obey the laws.

Petitioner sent a copy of his 3 page notice to the State Attorney General by means of certified mail receipt no. P 489 510 931 which was received by the office of the attorney general on 4/21/87. Petitioners notice was ignored and in response to the petitioner's subsequent inquiry the attorney general belittled the notice.

Defendants made their motion to dismiss petitioner's action to the Eastern District court judge. Those motions were a solicitation to the judge to commit a crime for the benefit of the defendants & all the defendants ratified the illegal solicitation to commit a crime fabricated by defendant Jerome M. Varanini.

When the court clerk received the defendants motion to dismiss my action, the clerk stamped the motion "lodged" 6-9-1987.

The court did nothing & the motion had the entire intent of the judges action contained in the motion. Anderson filed his no-

tice of Appeal based upon that motion.

Federal Rules of Civil Procedure do not have any standards of meaning or application for the ambiguous term lodged.

Federal Rules of Appellate Procedure do not have any standards of meaning or application for the ambiguous term lodged.

Federal Rules of Civil procedure Rule 83, Rules by district courts.

Each district court by action of a majority of the judges there of may from time to time, . . . make and amend rules governing it practice not inconsisten with these rules.

FRCP Rule 1, Scope of Rules.

These rules govern procedure in the U. S. district courts in all suits of a civil nature. . .they shall be construed to secure the just, speedy, & inexpensive determination of every action.

The U.S. District Court for the Eastern district of California, by act of a ma-

jority of judges of that court fabricated. its local rule 101, which is shown below.

Rule 101. Definitions

For purposes of these Rules, unless the context otherwise requires, the terms below are defined as follows.

(1) "Action" includes any case, proceeding, or matter.

(16) "Lodged" means delivered to the Clerk or to the courtroom deputy for inclusion in the official records of the action, with a request for signature or other appropriate action by the Court.

Judge E.J. Garcia deliberately stalled and 41 days later the court clerk stamped defendant Varanini's motion filed, contrary to the command of FRCP Rule 1.

In the text Federal Practice by Wright, et al, Section 3152, rules by district cts, he states many courts use local rules to entrap & deprive litigants of their civil protection of the laws and due process of laws.

The delay by judge Garcia in signing the motion submitted by def. Varanini was a deliberate act of judicial misconduct and was made with intent to entrap and deprive Anderson of his civil rights of appeal.

After Garcia signed the motion that had been lodged, Anderson filed another Notice of Appeal and paid a second filing fee.

The Court of Appeals accepted the second filing of Notice of Appeal and the payment of the second filing fee. The second Notice of Appeal was given another number which was 87-2655.

Judge Garcia misused the authority of his office & discriminated against Anderson and deprived appellant of his constitutional rights to Equal Protection of the Laws.

Anderson raised the matter, discrimination in his Reply Brief, page 10, appellate number 87-2369.

The appellate court panel, ignored the evidence and complaints made by appellant.

The next 2 pages show the title page of that motion showing the 41 days difference in the lodged date & the signing and filing date of the motion.

Those 2 dates give visual evidence of the judicial misconduct by judge Garcia.

This page is the left hand half of the court's Order showing the L.R. 101 stamp.

MEMERING, VARANINI, HURST
CROWLE & TRIMBLE
A Professional Corporation
P. O. Box 590
Sacramento, California 95803
Telephone: (916) 923-2800

Attorneys for Defendants,
JOHN L. SULLIVAN, CADDEL
CHEVROLET CORP., SUZANNE
TRIMBLE, LINDA D. MC CREA
AND MEMERING, VARANINI, F
CROWLE & TRIMBLE

LODGED
JUN 9 1981
CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
DEPUTY CLERK

IN THE UNITED S

EASTERN

HENRY ANDERSON,

Plaintiff,

vs.

JOHN L. SULLIVAN, CADDEL
CORP., SUZANNE M. TRIMBLE
LINDA D. MC CREARY,
PAMELA E. COGAN, AND GEN
MOTORS CORPORATION and
Professional Corporation of MEI
VARANINI, HURST, CROWLE &

Defendants.

MEMERING, VARANINI, HURST, CROWLE & TRIMBLE
PROFESSIONAL CORPORATION
P.O. BOX 590
SACRAMENTO, CALIFORNIA 95803
(916) 923-2800

This page is the right hand half of the court's Order showing the filing stamp.

FILED

JUL 20 3 40 PM '87

M.
RY,
URST,

STATES DISTRICT COURT FOR THE

DISTRICT OF CALIFORNIA

NO: CIVS-87-0204 EJG

ORDER DISMISSING PLAINTIFF'S COMPLAINT WITH PREJUDICE (FRCP Sections 12(b)(6), 12(h)(2))

CHEVROLET

ERAL

MERING,
TRIMBLE,

Unable to secure his rights to Equal Protection of the laws, in the 9th Circuit Court of Appeals, Anderson filed his civil rights action in the Northern District of California, district court.

Petitioner filed a motion in district court seeking the benefits & protection due petitioner under 28 USC 1827, which were denied by the court in its order of dismissal page 2, lines 18 & 19, Appendix B herein.

Judge Schnacke has no academic, professional, technical or practical qualifications that enable him to make intelligent decisions regarding petitioner's physical handicap of impaired hearing.

That statute 28 USC 1827 does not comply with the standards established by this Court, for valid legislation. That statute has no standards of meaning or application set forth & it allowed the prejudiced court to deprive Anderson of his civil rights to Due Process of Law.

"Not only does a vague statute run the risk of entrapping the innocent, it impermissibly delegates basic policy matters to policemen, judges and juries on an ad hoc & subjective basis, with the attendant dangers of arbitrary and discrimnatory application."
Grayned v Rockford, 408 U.S. 104.

A copy of that statute 28 USC 1827 is set forth below.

§ 1827. Interpreters in courts of the United States

(a) The Director of the Administrative Office of the United States Courts shall establish a program to facilitate the use of interpreters in courts of the United States.

(b) The Director shall prescribe, determine, and certify the qualifications of persons who may serve as certified interpreters in courts of the United States in bilingual proceedings and proceedings involving the hearing impaired (whether or not also speech impaired), and in so doing, the Director shall consider the education, training, and experience of those persons. The Director shall maintain a current master list of all interpreters certified by the Director and shall report annually on the frequency of requests for, and the use and effectiveness of, interpreters. The Director shall prescribe a schedule of fees for services rendered by interpreters.

(c) Each United States district court shall maintain on file in the office of the clerk of court a list of all persons who have been certified as interpreters, including bilingual interpreters and oral or manual interpreters for the hearing impaired (whether or not also speech impaired), by the Director of the Administrative Office of the United States Courts in accordance with the certification program established pursuant to subsection (b) of this section.

"The law of the United States cannot be evaded by the forms of local practice, The local rules applied as to the burden of proof narrowed the protection that the defendant had secured and therefore contravened the law." American Railway Express Co. v Levee, 263 U.S. 19.

"Rights in property are basic civil rights." Lynch v Household Finance Corp. 92 S. Ct. 1113

"The cited cases are premised on the underlying theory that a public official acts as "trustee for the citizens & the state". . ."and thus owes the normal fiduciary duties of a trustee e.g. honesty and loyalty to the citizens & the state. The logic continues that as the cestui, the public is entitled to the faithful and disinterested services of government servants and employees, and a public official may not deprive the public of its rights." U.S. v Mandel, 591 F.2d 1363.

"The operation of the courts & the judicial conduct of judges are matters of utmost public concern." and "that injury to the reputation of judges or of judicial institutions is an insufficient basis for state suppression of free expression." Landmark Communications, Inc. v Virginia. The opinion was by Burger Ch. j. joined by White, Marshall, Blackmun, Rehnquist and Stevens, jj.

"A cause of action & damages remedy can be implied directly under the Constitution when the Due Process clause of the Amendment is violated." Butz v Economou, 438 U.S. 478.

Ninth Circuit Court of Appeals local rule 21, passed by a majority of judges in active service creates prior restraint subject to the prejudices of the using judges.

> "Any system of prior restraint of expression bears a heavy presumption against its Constitutional validity and the government carries a "heavy burden" to justify enforcing any system of prior restraint." Justices Black & Douglas maintained that there can never be prior restraint of the press. "Paramount among the responsibilities of a free press is the duty to prevent any part of the government from deceiving the people." New York Times v United States 403 U.S. 713, 714.

> Prior restraints on speech are the most serious & least tolerable infringements on First Amendment rights. . ., a prior restraint. . . has an immediate & irreversible sanction. If it can be said that a threat of criminal or civil sanctions after publication "chills" speech, prior restraint "freezes" it at least for the time." Nebraska Press Ass'n v Stuart. 427 U.S. 539, 559.

> If the authors of these guarantees, fully aware of the potential conflicts between them, were unwilling or unable to resolve the issues by assigning to one priority over the other, it is not for us to rewrite the Constitution by undertaking what they declined to do. 427 U.S. at 561.

The local rule 21, is part of the practice and policy of the Ninth Circuit Court of Appeals & violates the provisions of the First Amendment to the Constitution.

Amendment I, Congress shall make no law . . . abridging the freedom of speech, or of the press.

Congress cannot authorize agents or inferior agencies to do, what Congress is forbidden to do.

The United States Constitution does not give courts the power to legislate.

The court of appeals has tyrannically fabricated its local rule 21, which is used to conceal & cover up the misconduct of the judges, under color of law.

The appeals court by action of a majority of its members, has created a class of untouchables not to be acknowledged publicly or allowed to appear in person in the court of appeals, thereby depriving the untouchable appellants of Due Process of Law.

Judges Tang, Noonan and Waters created judicial misconduct in their Memorandum decision number 89-15756 made under rule 21.

This Supreme Court has the authority & duty to void that rule 21; shown below.

Rule 21. Form and Publication of Disposition of Cases (Partial copy)

(a) Opinions, Memoranda, Orders; Publication. Each written disposition of a matter before this Court shall bear under the number in the caption the designation OPINION, or MEMORANDUM, or ORDER.

A written, reasoned disposition of a case which is intended for publication is an OPINION of the Court. It may be an authored opinion or a per curiam opinion. A written reasoned disposition of a case which is not intended for publication is a MEMORANDUM. Any other disposition of a matter before the Court is an ORDER. An ORDER or memorandum shall not reveal its author, nor shall it be designated "Per Curiam."

All opinions are published; no memoranda are published; orders are not published unless the Court so designates in particular cases. As used in this rule, the term PUBLICATION means making a disposition available to legal publishing companies, so that the same may be reported and cited.

(b) When Disposition Is To Be By Opinion. Dispositions shall be published if one or more of the criteria for publication set forth below are met. The disposition:

(1) Establishes, alters, modifies or clarifies a rule of law, or

(2) Calls attention to a rule of law which appears to have been generally overlooked, or

(3) Criticizes existing law, or

(4) Involves a legal or factual issue of unique interest or substantial public importance, or

(5) Decides a case in which there is a published opinion by a lower court or administrative agency, unless the panel determines that publication is unnecessary for clarifying the panel's disposition of the case, or

BREACH OF DUTIES BY FEDERAL COURTS

28 USC 2071 allows federal courts to make local rules of court, consistent with acts of Congress. It is brazen arrogance & stupid for the court of appeals to make local rules on subjects that Congress cannot legislate upon. The inferior entity has no power to do what the superior cannot do.

§ 2071. Rule-making power generally

The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed by the Supreme Court.

§ 2072. Rules of civil procedure

The Supreme Court shall have the power to prescribe by general rules, the forms of process, writs, pleadings, and motions, and the practice and procedure of the district courts and courts of appeals of the United States in civil actions, including admiralty and maritime cases, and appeals therein, and the practice and procedure in proceedings for the review by the courts of appeals of decisions of the Tax Court of the United States and for the judicial review or enforcement of orders of administrative agencies, boards, commissions, and officers.

Such rules shall not abridge, enlarge or modify any substantive right and shall preserve the right of trial by jury as at common law and as declared by the Seventh Amendment to the Constitution.

ABUSE OF PROCESS BY DEFENSE LAWYERS

Petitioner filed affidavits in the appellate court stating that defendants General Motors & John L. Sullivan never made any demands for information from petitioner buyer, prior to or during the sales negotiations of the product to the buyer.

The defendants are estopped from making such demands for information now.

> Judicial estoppel is designed to protect integrity of courts and judicial process from inconsistent positions of parties & involves consideration of orderliness, regularity and expedition in sworn positions & litigation. Moore v United Services Auto. Ass'n. 808 F.2d 1147

> Estoppel prevents one party from taking a position contrary to one previously asserted, ehen to do so would be unfair. Goodwin R.R. Inc. v State, 517 A.2d 418

> Doctrine of estoppel states that one who by words or conduct, has induced another to believe particular thing to be true & to act upon such, belief shall not be permitted to contradict it. Lentz v McMahon, 231 Cal. Rptr. 622

> But discovery like all matters of procedure has ultimate and necessary boundaries. Hickman v Taylor, 329 U.S. 507

Petitioner Anderson, has never had Due

This page presents a copy of 28 USC 372 Section (c)(1). The statute allows filing of complaints for judicial misconduct alleging that a circuit or district court judge has engaged in conduct prejudicial to the effective & expeditious administration of the business of the courts.

§ 372. Retirement for disability; substitute judge on failure to retire; judicial discipline

(c)(1) Any person alleging that a circuit, district, or bankruptcy judge, or a magistrate, has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such a judge or magistrate is unable to discharge all the duties of office by reason of mental or physical disability, may file with the clerk of the court of appeals for the circuit a written complaint containing a brief statement of the facts constituting such conduct.

(2) Upon receipt of a complaint filed under paragraph (1) of this subsection, the clerk shall promptly transmit such complaint to the chief judge of the circuit, or, if the conduct complained of is that of the chief judge, to that circuit judge in regular active service next senior in date of commission (hereafter, for purposes of this subsection only, included in the term "chief judge"). The clerk shall simultaneously transmit a copy of the complaint to the judge or magistrate whose conduct is the subject of the complaint.

APPENDIX B

PROCEDURES OF THE NINTH JUDICIAL CIRCUIT RELATING TO THE HANDLING OF COMPLAINTS OF JUDICIAL MISCONDUCT UNDER 28 U.S.C. § 372(c)

1. Any person alleging that a circuit, district or bankruptcy judge, or a magistrate, has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts, or alleging that such a judge or magistrate is unable to discharge all the duties of office by reason of mental or physical disability, may file with the Clerk of the Court of Appeals a written complaint containing a brief statement of the facts constituting such conduct. All complaints must be dated, signed and concluded with the following declaration: "I declare under penalty of perjury that the foregoing is true and correct." Anonymous complaints will not be accepted. The complaint shall be captioned "In re: Complaint of Judicial Misconduct." No identification of the complainant or of the judge involved shall appear in the caption, and the text of the complaint shall be under seal.

2. Upon receipt of a complaint filed under paragraph 1, the clerk of the court of appeals shall promptly transmit such complaint to the chief judge of the circuit, or, if the conduct complained of is that of the chief judge, to that circuit judge in regular active service next senior in date of commission (hereinafter included in the term "chief judge"). The clerk shall simultaneously transmit a copy of the complaint to the judge or magistrate whose conduct is the subject of the complaint, and, in the case of a district judge or magistrate, to the chief judge of the district concerned. If the conduct complained of is that of the chief judge of the district, the copy of the complaint shall be transmitted to the district judge of the district in regular active

This page presents a copy of the court of appeals emasculated, misrepresentation of that same 28 USC 372(c)(1) which is illegal falsification of the federal statute thru practice & policy of the Court of Appeals.

MISCONDUCT BY DEFENDANT LAWYERS

Defense lawyers Jerome M. Varanini, Suzanne M. Trimble & the P.C. Memering, Varanini, Hurst, Crowle & trimble have all committed misconduct in their professional actions in this civil case.

Defendants Jerome M. Varanini & Suzanne M. Trimble and each of them have or should have subscribed to the mandatory oath of office required by the State Bar & the laws.

That oath of office, is written evidence of a contract bewteen the lawyers & PEOPLE of the State of California.

Defendants Varanini and Trimble are estopped from denying the existance of their contract to support the U.S. Constitution & the California State Constitution.

The State of California cannot pass any laws impairing the obligations of defendant lawyers to their promissory contracts.

The California State Supreme Court cannot pass any rules or make any decisions

impairing the obligations of defendant lawyers promissory contracts.

Defendants Pamela Cogan, Denise Fischer and the P.C. of Weintraub, Genshlea, Hardy Erich & Brown are estopped from denying the words & intent of their promissory contract.

Defendant lawyers and law corporations are also estopped by Cal. Ev. Code Section 623 in denying their promissory contracts.

> The protection against self-incrimination is a personal right that cannot be asserted by corporations, unincorporated associations, partnerships or similar entities, including law firms. Bellis v United States, 417 U.S. 85.

California Business & Professions Code Section 6000, states, the state bar may sue and be sued. Any attempt by the bar claiming immunity impairs the obligations of its contract with the PEOPLE of California.

Protection against self incrimination cannot be asserted by the State Bar of California, nor its agents or employees. Nor can it be invoked by the state courts.

Petitioner Anderson sent a letter dated 12/17/1988 by U.S. Certified mail receipt number P 475 128 159, the letter was received by the State Bar, but the Bar never answered petitioners requst for help in resolving his controversies with the defendant lawyers.

The State Bar in common with all monopolies evaded my request & ignored it.

The State Bar had the legal duty to act, respond, but did nothing which is nonfeasance.

> Nonfeasance is nonperformance of some act which ought to be performed, omission to perform a required duty at all or total neglect of duty. Desmarais v Wachusett Regional School Dist. 360 Mass. 591, 276 N.E. 691,693

> Chief Justice Marshall said "the essence of civil liberty" required a legal remedy for a legal wrong. Since the government of the United States is one of lawsand not of men, it must grant a remedy for violation of vested legal rights.Marbury v Madison, 5 U.S. (1 Cranch) 137 (1803

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for several reasons. The court of appeals has made & condoned the making of local court rules inconsistent with the federal rules and that practice calls for exercise of its powers of supervision by this Supreme Court.

The question of petitioners rights of estoppel as embraced in the 9th Amendment to the Constitution should be decided by this Supreme Court.

Whether the constitutional prohibition against impairment of contracts includes the abuses of discovery by way of fictional questions as shown in this controversy?

Whether federal courts are qualified to make intelligent decisions about the impaired hearing of petitioner in this action?

The court of appeals has decided federal questions in ways that conflict with applicable decisions of the Supreme Court & that requires exercise of the supervisory

powers of this Court.

CONCLUSION

The Supreme Court has recognized abuses of discovery during litigation & the Court should examine those abuses in the context of impairment of obligations of contracts.

The Supreme Court knows that censorship by the Ninth Circuit Court of Appeals is the act of tyrants & that censorship is used to conceal & coverup the misconduct of the censors with its creation of classes of untouchables, made by the judges.

This Supreme Court should void all attempts by the 9th Circuit Court of Appeals to legislate since those judges have absolutely no authority to create legislation.

The United States Constitution is explicit in the seperation of powers by the various branches of the government.

For these reasons, a writ of certiorari should be granted to review the judgment of the Ninth Circuit Court of Appeals.

Respectfully submitted. Dated 11/10/1990.

Henry Anderson.
676 Covey Road
Valley Springs
Ca. 95252

APPENDIX A

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HENRY ANDERSON, Plaintiff-Appellant, V. STATE BAR OF CALIFORNIA, JEROME M. VARANINI, SUZANNE M. TRIMBLE, MEMERING, VARANINI, HURST, CROWLE & TRIMBLE, JOHN L. SULLIVAN, PAMELA E. COGAN, DENISE J. FISCHER, WEINTRAUB, GENSHLEA, HARDY, ERICH & BROWN, GENERAL MOTORS CORPORATION, Defendants-Appellees.	No. 89-15756 DC# CV-89-0272 RHS MEMORANDUM* FILED 7-23-1990

Appeal from the United States District Court for the Northern District of California
Robert H. Schnacke, Senior District Judge, Presiding

Submitted July 19, 1990**
San Francisco, California

Before: TANG and NOONAN, Circuit Judges, and WATERS***, District Judge:

Plaintiff-appellant Henry Anderson ("Anderson") appeals pro se the district court's dismissal of his action for

failure to state a claim on which relief could be granted. We affirm.

BACKGROUND

Anderson brought a state action against General Motors ("GM"), Caddel Chevrolet ("Caddel"), and John L. Sullivan ("Sullivan") -- Caddel's successor-in-interest -- arising out of the sale of an allegedly defective truck. In the course of this state action, attorneys for GM, Caddel and Sullivan served Anderson with interrogatories and attempted to depose him. Anderson refused to respond to the interrogatories.

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Cir. R. 36-3

** The panel finds this case appropriate for submission without oral argument pursuant to Fed. R. App. P. 34(a) and Ninth Cir. R. 34-4.

*** Honorable Laughlin E. Waters, Senior United States District Judge for the Central District of California, sitting by designation.

The state court ultimately dismissed the action for failure to comply with discovery orders.

Anderson then filed an action in federal district court under 42 usc sec. 1983 and 1985 against GM, Caddel, Sullivan and their attorneys. Anderson's principal contention was that the attorneys for GM, Caddel, and Sullivan conspired to serve him with "unconstitutional interrogatories". The district court dismissed the action with prejudice for failure to state a claim on which relief could be granted. A panel of this court affirmed the district court's judgment in a memorandum decision issued June 15, 1989. Anderson v Sullivan, et al. Nos 87-2369, 87-2655 (9th Cir. june 15, 1989.)

Anderson filed the present action on January 30, 1989 against most of the same defendants named in his prior federal action as well as several new defendants

including the State Bar of California, ("State Bar"). His amended complaint, filed March 1, 1989, sets forth several allegations that are identical to the allegations in his prior federal action. In addition, the amended complaint newly alleges claims for relief on grounds that the co-defendant attorneys and their respective law firms violated the Rules of Professional Conduct and that the State Bar failed to perform its regulatory functions with respect to those attorneys and law firms. The district court found that the amended complaint is frivolous as to all defendants, granted all motions to dismiss, and dismissed the action in its entirety. In the course of so doing the district court also denied Anderson's motion as to an interpreter for the hearing impaired. This appeal followed.

STANDARD OF REVIEW

A dismissal for failure to state a

claim pursuant to Fed. R. Civ.P. 12 presents a question of law and is therefore reviewed de novo. Kruso v International Telephone and Telegraph Corp., 872 F.2d 1416, 1421 (9th Cir. 1989), cert. denied, 1990 L.W. 60388 (June 18, 1990).The existence of subject matter jurisdiction likewise presents a question of law reviewed de novo. Id. We may affirm the district court judgment on any ground finding support in the record. Id.

DISCUSSION

1. This Court's Jurisdiction: The Notice of Appeal

All of the defendants, except the State Bar, contend that because Anderson's Notice of appeal refers to the district court's order granting the motions to dismiss, rather than the seperate judgment entered June 1, 1989, this court lacks jurisdiction over Anderson's appeal. The district court's order granting the motions

to dismiss was announced in open court on May 5, 1989 and was filed on May 30, 1989. Anderson filed his notice of appeal on June 1, 1989. His appeal is timely under Fed. R. App.P. 4(a)(2)("a notice of appeal filed after the announcement of a decision or order but before the entry of judgment or order shall be treated as filed after such entry and or the day thereof.") Moreover, "a mistake in designating the judgment appealed from should not bar appeal so long as the intent to appeal a specific judgment can be fairly inferred and the appellee is not prejudiced by the mistake." Kruso, 872 F.2d at 1422 (quoting United States v One 1977 Nercedes Benz, 708 F.2d. 444 (9th Cir. 1983), cert. denied, 464 U.S. 1071 (1984).

2. Claims Against Co-Defendants Other Than The State Bar

As he did in his prior federal action, Anderson contends that the attorneys repre-

presenting GM, Caddel, and Sullivan conspired to serve him with "unconstitutional interrogatories" & to pose to him counterfeit questions" during depositions, thereby depriving him of his civil rights. Anderson also appears to ground his claims for relief on the further contention that the co-defendant attorneys failed to adhere to the Rules of Professional Conduct. We affirm the district court's granting of the applicable motions to dismiss for the same reasons we affirmed the dismissal of Anderson's prior federal action, Anderson v Sullivan et al., Nos. 87-2369, 87-2655 (9th Cir. June 15, 1989). Briefly, those reasons are as follows.

Anderson cannot maintain a claim under Section 1983 because the actions of a corporation in defense of a civil lawsuit "do not constitute state action", nor do those of its privately retained defense counsel. See Polk County v Dodson, 454 U. S. 312,

317-319 (1981); Flagg Bros. Inc. v Brooks, 436 U.S. 149, 164-65 (1978). Anderson cannot maintain a claim under Section 1985(3) because his complaint fails to allege that the defendants conduct was motivated by a racial or other class-based, invidiously discrimnatory animus. Griffin v Breckenridge, 403 U.S. 88, 102 (1971). Finally no claim may be stated under section 1985(2) for interfering with a state court witness because that statute applies to federal trials only. Rutledge v Arizona Bd. of Regents, 859 F.2d732, 735 (9th Cir. 1988).

3. Claims Against the State Bar

Anderson's amended complaint alleges that the State Bar deprived him of his constitutional rights to equal protection and due process by failing to enforce Rules of Professional Conduct against the co-defendant attorneys and law firms. He further alleges that the State Bar thereby caused him "intense emotional distress;"

he seeks both general & punitive damages.

The exclusive authority to regulate the conduct of attorneys admitted to practice law in California is vested in the California Supreme Court. See Theard v United States, 354 U.S. 278, 281 (1957). The State Bar is an instrumentality or "arm" of the California Supreme Court and as such, assists the court in administering the regulation of the practice of law, but the final decision regarding these matters ultimately rests with the California Supreme Court. See Margulis v State Bar of California, 845 F.2d 215,216 (9th Cir.1988) (per curiam); Chaney v State Bar, 386 F.2d 962, 966 (9th Cir. 1967) cert. denied, 390 U.S. 1011 (1968). Anderson did not petition the California Supreme Court for review of the State Bar's alleged action or inaction in this case. Hence, the State Bar has not officially acted on Anderson's claims and,therefore has never deprived

him of federal protected rights. Margulis 845 F.2d at 216. The district court properly granted the State Bar's motion to dismiss.

4. Interpreters for the Hearing Impaired

Anderson argues that the district ct. deprived him of the "protection & benefit" of the court interpreters act of 1978, 28 USCS 1827, which, he asserts was enacted in order to assist persons with impaired hearing in their appearances before the court. Even if it is assumed that Anderson suffers from a hearing impairment, a point which is far from clear in the record before us, his argument is wholly without merit. Under section 1827(d), the court shall utilize the services of an interpreter "in judicial proceedings instituted by the United States" when the court determines that a party or witness suffers from a hearing impairment. The present action was initiated by Anderson. Hence, the

district court had no duty to inquire as to the need for an interpreter or to appoint one if needed. Cf.eg. United States v Lim, 794 F.2d 469, 470(9th Cir.)(A criminal defendant has a statutory right to a court-appointed interpreter when his comprehension of the proceedings is impaired) cert. denied, 479 U.S. 937 (1986).

CONCLUSION

This appeal is frivolous and entirely unmeritorous. The district court judgment entered June 1, 1989 is affirmed. No petition for rehearing will be entertained. AFFIRMED.

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

HENRY ANDERSON, Plaintiff, vs. STATE BAR OF CALIFORNIA, et al., Defendants.	C-89-272 RHS ORDER FILED MAY 30, 1989

In this civil action: (a) all defendants except John Sullivan move to dismiss; (b) all defendants except Sullivan & State Bar of California move for monetary sanctions and injunctive relief; and (c) plaintiff Henry Anderson, who represents himself makes three motions. The hearings on the various motions have been scheduled for May 5, 1989, May 26, 1989 & June 2, 1989. A status conference was held on May 5, 1989.

Defendants' motions, other than those to dismiss, seek: (a) monetary sanctions against Anderson, in the form of attorney's

fees and costs incurred by defendants in certain litigation commenced by Anderson; and (b) injunctive relief against further litigation by Anderson. However, defendants set forth no authority for using Anderson's conduct in other actions as a basis for an award of monetary sanctions against him in the action at bar. Furthermore, the motions for injunctive relief are not supported by any affidavits or declarations under penalty of perjury.

The amended complaint: (a) alleges that there is federal question jurisdiction over the action at bar, (b) does not allege that there is diversity jurisdiction or pendent jurisdiction over the action at bar; & (c) asserts various federal law claims. But none of the wrongdoing alleged in the amended complaint constitutes a United States Constitutional violation or anything else, that is actionable under federal law.

This Court hereby: (a) grants Andersons

motion for leave to file late his papers opposing certain defendant's motions; (b) denies Anderson's motion to strike defendant Denise Fischer's declaration, under penalty of perjury; in support of one of the motions for monetary sanctions; (c) denies Andersons motion as to interpreters for the hearing-impaired; (d) finds that the amended complaint is frivolous, as to all defendants; (e) grants all pending motions to dismiss; (f) dismisses, in their entirety the amended complaint and the action at bar; (g) denies all pending motions for monetary sanctions and injuctive relief; (h) bases the denial, of the motions for monetary sanctions, on movant's failure to indicate the amount of monetary sanctions that would be justified solely by Anderson's conduct in the action at bar; (i) bases the denial, of the motions for injunctive relief, on movant's failure to support these motions with any affidavits or declarations under penalty

of perjury (see U.S. Dist. Ct., N.D. Cal., Local Rule 220-2); (j) imposes, as a F.R. Civ. P., Rule 11, sanction, the requirement that before Anderson commences in the future any action in a United States District Court, he obtain from a United States District judge permission to commence such action; and (k) cancels the aforementioned May 26, 1989 and June 2, 1989 hearings.

Dated: May 23, 1989

/s/ Robert H. Schnacke
United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

HENRY ANDERSON, Plaintiff, vs. JOHN L. SULLIVAN, CADDEL CHEVROLET CORP., SUZANNE M. TRIMBLE, LINDA D. McCREARY, PAMELA E. COGAN, & GENERAL MOTORS CORPORATION and Professional Corporation of MEMERING, VARANINI, HURST, CROWLE, and TRIMBLE, Defendants	No. CIVS-87-0204 EJG ORDER DISMISSING PLAINTIFF'S COMPLAINT WITH PREJUDICE(FRCP Sections 12(b)(6), 12(h)(2)

The motion of defendant Pamela E. Cogan, to dismiss the above entitled action on the ground that no justiciable federal case or controversy exists came on regularly for hearing on May 22, 1987, and was submitted for decision to June 5, 1987. The motion of defendants, John L. Sullivan, Caddel Chevrolet Corp., Suzanne M. Trimble, Linda D. McCreary, Memering, Varanini, Hurst, Crowle & Trimble, and General Motors Corporation, to

dismiss the above-entitled action on the ground that no justiciable federal case or controversy exists came on regularly for hearing on June 5, 1987. Henry Anderson plaintiff in pro per, appearing, Mark A. Hurst appearing for defendants, John L. Sullivan, Caddel Chevrolet Corp., Suzanne M. Trimble, Linda D. McCreary, and Memering, Varanini, Hurst, Crowle & Trimble and, Pamela E. Cogan appearing for defendant, Gener- Motors Corporation.

Now, the court having heard & considered the matter and the arguments and briefs of the respective parties relating thereto and the court having filed its memorandum of opinion finding that plaintiff's cause of action under 42 USC Section 1945 is patently frivolous on its face and plaintiff's cause of action under 42 USC Section 1983 as a matter of law fails to state a cause of action and is meritless and frivolous,

IT IS THEREFORE ORDERED that the motions

to dismiss filed by defendants herein are granted and the above-entitled action be & it is hereby dismissed with prejudice.

LODGED

JUNE 9, 1987

By the court clerk.

Signed 7/20/87 ./s/

Edward J. Garcia
Judge of the United
States District Court,
Eastern District

FILED

JUL 20, 1987

APPENDIX D

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HENRY ANDERSON, Plaintiff-Appellant, V. JOHN L. SULLIVAN, CADDEL CHEVROLET CORP., SUZANNE M. TRIMBLE, LINDA D. McCREARY, PAMELA E. COGAN, GENERAL MOTORS CORP., MEMERING, VARANINI, HURST, CROWLE & TRIMBLE, Defendants-Appellees.	Nos. 87-2369/2655 DC No. CV-87-0204-EJG ORDER

Before: PREGERSON, O'SCANNLAIN, and TROTT Circuit Judges

The panel has voted to deny the petition for rehearing and to reject the suggestion for rehearing en banc.

The full court has been advised of the en banc suggestion, and no judge of the court has requested a vote on it.

The petition for rehearing is DENIED and the suggestion for rehearing en banc is REJECTED.(Dated and filed October 12 1989)

APPENDIX E

UNITED STATES CONSTITUTION

Article I, Section 10 (1) No State shall. . . pass any . . .Law impairing the Obligation of Contracts, . . .

Article III, Section 1. The judicial Power of the United States shall be vested in one supreme court, . . .

Article VI, (2) This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; . . . under the Authority of the United States, shall be the supreme law of of land; and the judges in every State shall be bound thereby, . . .

Amendment I. Congess shall make no law . . . abridging the freedom of speech, or of the press; . . .

Amendment V. No person shall. . . be deprived of life, liberty, or property, without due process of law.

Amendment VII. In suits at common law,

. . . the right of trial by jury shall be preserved.

Amendment IX. The enumeration in the Constitution, of certain rights, shall not construed to deny or disparage others retained by the people.

Amendment X. The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment XIV. Section 1. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Federal Statutes

APPENDIX F

UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF CALIFORNIA

HENRY ANDERSON, Plaintiff, vs JOHN L. SULLIVAN, CADDEL CHEVROLET CORP., SUZANNE M. TRIMBLE, LINDA D. McCREARY, PAMELA E. COGAN, GENERAL MOTORS CORPORATION and Professional Corporation of MEMERING, VARANINI, HURST, CROWLE and TRIMBLE, Defendants.	) CIVIL NO. CIVS-87-0204 EJG) Local Rule 133, (b)) NOTICE OF CLAIM OF UNCONSTITUTIONALITY) FILED April 2 1987.

Local Rule 133 (b).

Plaintiff alleges that California Code of Civil Procedure sections 2030 & 2016 are unconstitutional on their face & or as applied, for the following reasons.

Those California Code of Civil Procedure sections are contrary to and contradict U.S. Constitution Article VI, Clause 2 and the commands of the Fourteenth Amendment, Section 1.

Those California Code Sections do not provide "Equal Protection of the Laws" for persons using the California courts. Those code sections do not give any standards of meaning for the ambiguous word, relevant. Those code sections with the ambiguous words have allowed various state courts to impose their own, ambiguous, elastic meanings to suit the purpose of the judges involved, and being court rulings can be praised or ignored, depending upon the attitudes of the judges & or lawyer's temporarily using them.

With no standards of meaning for those code sections, the moving person or party using those two unconstitutional code sections proceeds to impose their concept of relevant/relevance on the discovery matters at hand, with no concern about Equal Protection of the Laws, for the opposition.

In the instant suit, a products liability suit, the selling dealer, John Sullivan

acting in conspiracy with his agent-lawyer Suzanne Trimble, had the agent fabricate 85 false, irrelevant interrogatories and serve them on plaintiff. A copy of the first page of those 85 false questions is attached hereto as Exhibit 3.

Note the stupid, bigoted, irrelevant parts of question number 1, in that exhibit 3, page 1. As a practical matter, how can any of those personal questions in Exhibit 3, page 1, be considered relevant, realistic, or reasonable in any controversy on a matter of defective product manufacture and its faulty assembly and allied causes of fraud and misrepresentation?

Where is the equal protection of the law in those very private personal questions?

In order to expose the irrelevance of those false questions, plaintiff has attached hereto as Exhibit 5, a copy of plaintiff set of 12 questions, which have been served on Suzanne Trimble, the person who fabricat-

ed the 85 false irrelevant interrogatories for the selling dealer, John L. Sullivan.

The agent-lawyer Pamela Cogan, acting for defendant General Motors Corporation, has accepted, adopted and presented the same false interrogatories in conspiracy with General Motors Corporation and Suzanne Trimble, to the plaintiff.

Plaintiff has attached hereto a copy of plaintiff's Exhibit 6, consisting of 19 questions served upon Pamela Cogan agent for General Motors Corp.; seeking information on relevance of how those personal questions of Suzanne Trimble to plaintiff, relate to or influenced General Motors in its decisions to design, manufacture, assemble & wholesale the defective vehicle to the selling dealer John L. Sullivan.

It is absolutely ridiculous to claim or imagine that the color of plaintiff's eyes or hair, or plaintiff's height or weight are or were relevant to General Motors cor-

porate practices and decisions.

Pamela Cogan shows a deliberate lack of understanding the ordinary facts of life, & ordinary manufacturing processes; yet she Pamela Cogan says she is entitled to force plaintiff to answer those stupid juvenile questions, because she says they are relevant to her professional privileges & litigation strategy.

Where is the U.S. Constitution, Fourteenth Amendment commands of Equal Protec- of the Laws in this situation?

WHEREFORE: plaintiff alleges that the two code sections of civil procedure 2030 & 2016 are unconstitutional on their face and or as applied, since they do not obey the U.S. Constitution, XIV Amrndment commands of "Equal Protection of the Laws", for the parties, plaintiff and ddefendant.

Dated March 30, 1987.

By: /s/ Henry Anderson-Plaintiff